It is with great pleasure that we welcome you to the sixth edition of Ad Hoc, the biannual newsletter of the Melbourne Journal of International Law.

It is five months now since we wrote the Editors’ Welcome to the last edition of Ad Hoc and it has certainly been an incredibly busy and exciting time for MJIL. This period has seen not only the coming together of another stimulating and diverse collection of pieces for the upcoming volume 9(2), but also several exciting events for MJIL and the Melbourne Law School.

In August, the annual MJIL cocktail party was held in the elegant Long Room of the Immigration Museum and featured a highly engaging address by international refugee lawyer, former MJIL author and Dean of the Melbourne Law School, Professor James C Hathaway. This event included the formal announcement of the collaborative project between MJIL and its sister journal, the Melbourne University Law Review, for the production of the third edition of the Australian Guide to Legal Citation. August also saw several lectures held at the Law School by a number of leading international law scholars, including Philippe Sands QC and Yoram Dinstein. MJIL’s contribution to this season of international legal lectures was the Inaugural MJIL Public Forum — an initiative designed to engage the wider community in key debates in international law. Under the headline ‘Justice v Peace’, an eminent panel composed of Sir Ninian Stephen, Professor Tim McCormack and Mr Alpha Lisimba discussed the tensions between justice and peace in the context of international criminal law and post-conflict societies.

Amongst all this activity, the MJIL Committee has been busily involved in the production of the next edition, which will be released shortly. This issue features pieces by Philippe Sands and Malcolm Fraser addressing the accountability of US Government officials for interrogation methods in the War on Terror. Considering similar themes in the Australian context, Sir Anthony Mason and Professor Geoffrey Lindell review Leigh Sales’s Detainee 007: The Case of David Hicks, while Christian Tomuschat’s case note brings a European perspective to the issue, by considering the potential impact of the European Convention on Human Rights on the responsibility of the UK Government for its treatment of detainees interned overseas.

International environmental law also features prominently in volume 9(2). Owen Cordes-Holland reviews the impact of climate change on the human rights of Torres Strait Islanders and their potential remedies in international law; Dr Shirley Scott considers the potential for the UN Security Council to adopt a legislative role in the area of climate change; and Dr Priscilla Schwartz reviews Shyami Puvimanasinghe’s Foreign Investment, Human Rights and the Environment, reflecting on the relationship between foreign direct investment and sustainable development. This edition also includes pieces on the imminent release of the International Committee of the Red Cross report on voluntary human shields, the legality of Turkish action against the PKK in Iraq, the development of case law surrounding the US Alien Tort Claims Act and the recent development of the United Nations Declaration on the Rights of Indigenous Peoples.

Finally, we would like to thank our generous sponsors, Allens Arthur Robinson, Blake Dawson, Deacons, Mallesons Stephen Jaques and Rio Tinto, whose support and good will is integral to every aspect of the Journal.

We hope you enjoy this edition of Ad Hoc.

Rebecca Hughes, May-Ling Low and Zach Meyers
2008 Editors

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PROFESSOR PHILIPPE SANDS TALKS TORTURE AT THE ALLEN HOPE SOUTHEY MEMORIAL LECTURE 2008

The Bush Administration’s use of abusive interrogations in the War on Terror has been widely condemned. Yet whilst human rights activists have strongly criticised the Administration for breaching the prohibition of torture in international law, Professor Philippe Sands, delivering the 2008 Allen Hope Southey Memorial Lecture on 21 August 2008, instead focused on questions of legal ethics and international criminal law. Drawing from his recent book, *Torture Team: Deception, Cruelty and the Compromise of Law*, Professor Sands refuted the Bush Administration’s narrative that the abuse of detainees came from the ‘bottom up’, instead using interviews with Administration officials to demonstrate how breaches of the *Geneva Conventions* at Guantánamo Bay and elsewhere were authorised and legitimised by Administration lawyers.

The potential liability of the legal profession in international criminal law was established in the *Justice Trials* at Nuremburg. Using this precedent, and drawing on his account of lawyers’ critical role in authorising detainee abuse, Professor Sands’s lecture provided a compelling account of the potential liability of Administration lawyers and officials.

We are thrilled to announce that the text of the Lecture will be featured in volume 9(2), together with a response by former Prime Minister Malcolm Fraser, who uses Professor Sands’s work to reflect on these issues and their implications for the rule of law in Australia.

Zach Meyers
MJIL Editor 2008

**MJIL ANNUAL COCKTAIL PARTY 2008**

On the evening of 16 August 2008, the Annual *MJIL* Cocktail Party was held at the Immigration Museum in Flinders Street, Melbourne. The Museum provided the perfect atmosphere for the evening, boasting high ceilings and elegant surroundings in which members, alumni and friends of *MJIL* could mingle. The *Journal* welcomed the Dean of the Melbourne Law School, Professor James Hathaway, as guest speaker for the occasion.

Professor Hathaway’s honest and amusing reflections on his career as a world-renowned refugee lawyer and the place of international law in today’s political climate were enjoyed by all who attended. The Cocktail Party provided an excellent opportunity to celebrate the publication of volume 9(1) and anticipate the release of volume 9(2). Special congratulations are due to the Events Managers, Tahlia Brysha-Pullen and Hannah Foster, for their efforts in organising an unforgettable night.
On the evening of 8 October 2008, the Melbourne Law School hosted the inaugural MJIL Public Forum. The Panel consisted of three eminent speakers: Sir Ninian Stephen, former Governor-General of Australia and past Judge of the High Court of Australia, the ICTY and the ICTR, was joined by Professor Tim McCormack, Australian Red Cross Chair of International Humanitarian Law, and Mr Alpha Lisimba, Vice-President of the Darfur Australia Network. The question posed to the panel was ‘Justice v Peace: Does International Criminal Law Help Post-Conflict Societies?’, and the evening provided a unique opportunity to discuss the tensions created by international criminal law between the concepts of justice and peace, and the stabilisation of post-conflict societies.

As first speaker for the evening, Sir Ninian questioned the persistent positioning of the terms ‘justice’ and ‘peace’ as oppositional and mutually exclusive concepts. He agreed that intervention into post-conflict societies can be positive and beneficial. However, he went on to reflect that when prosecutions took place in this context, only those amongst the losing side were reprimanded or prosecuted for their actions. As such, ultimately ‘justice’ may be said to depend upon who emerges as victor. This, he concluded, reflects the unfortunate reality of ‘the character of laws which concern themselves with warring nations’.

Next, Mr Lisimba provided an intimate insight into his own personal experiences in Darfur as a witness to the genocide committed by the Sudanese Government in recent years. In reflecting upon the latent intervention of the international community, he identified insufficient global support at a political level as the cause of continuing instability and the postponement of peace in the region. In voicing his strong support for the intervention of the international community in Darfur, he reiterated that claims of sovereignty, deference of the issue as a regional concern, and an assumption that the Sudanese Government will eventually restore peace and justice to its people are all excuses which cannot justify prolonged inaction. Mr Lisimba emphasised the need for the ICC to continue prosecuting war criminals, as external intervention provides the Sudanese people with the only justice available to them within a legal framework which will not vindicate their rights. From Mr Lisimba’s perspective, ‘peace, without justice, cannot be sustainable’.

The final speaker for the night, Professor Tim McCormack, echoed the focus of Sir Ninian upon the polarisation of the terms ‘justice’ and ‘peace’. He unpacked this terminology and differentiated the contextual meanings of each term: justice, in his view, is a matter of perspective. It depends on ‘for whom’ and requires, as a fundamental precondition, ‘the cessation of conflict’. Peace, on the other hand, is a broader concept made possible by the termination of conflict. Professor McCormack highlighted the circularity of these two symbiotic concepts by pointing out that there is ‘no peace without justice’. He emphasised that justice can be obtained through different avenues, not just through criminal trials, and should not be substituted for earlier military intervention. Before societies subjected to war crimes can attain peace, they require retribution enforced collectively from an international level. Indeed, ‘to ignore impunity and a fail to challenge the pragmatic “let’s move on” mentality is to mock the dead, the tortured, the raped, the homeless … the devastated and humiliated’.

The inaugural MJIL Public Forum attracted much interest and a high attendance from the Law School and the broader community. We look forward to many more opportunities to delve into equally stimulating topics at future Forums.

Lily Fordyce
MJIL Sponsor Liaison Officer 2008
REVISING THE AUSTRALIAN GUIDE TO LEGAL CITATION

The Melbourne Journal of International Law is excited to be joining the Melbourne University Law Review in collaborating on the third edition of the Australian Guide to Legal Citation ('AGLC').

Since the release of the first edition in 1998, the AGLC has become the leading legal citation guide in the region, having been adopted throughout Australia and New Zealand by law journals and law schools. The third edition of this popular guide will see the update of existing citation rules and the inclusion of new rules for additional types of sources, with a particular focus on useability and consistency.

In addition to revitalising the AGLC, it is hoped that this collaborative project will foster closer ties between MULR and MJIL, as the AGLC 3 Committee combines knowledge and citation expertise from the editorial boards of both sister journals. The Committee began work in early September, considering suggested changes, revising existing rules and debating the addition of new rules. As a testament to the high profile of and interest in the AGLC, the Committee received hundreds of comments and suggestions for the new edition from academics, librarians and students, which have served as the bases for eager discussion.

MJIL is particularly excited about the expansion of the International Materials section to incorporate aspects of the Melbourne Manual for International Legal Citation in the new edition. These inclusions will ensure that the AGLC 3 will enable legal academics and students to reference international materials accurately and authoritatively.

James Ellis
AGLC 3 Committee Member 2008 and MJIL General Member 2008
May-Ling Low
AGLC 3 General Editor 2008 and MJIL Editor 2008

MJIL RESOURCE WIKI

The Melbourne Journal of International Law is a peer-reviewed academic journal edited to the highest standard by volunteering students. Whilst MJIL editors are excellently trained and equipped with professional skills, the average career of an MJIL member is two to four years. Thus, the MJIL Resource Wiki has been developed to provide a repository for the knowledge and skill of its student workers, and as part of the endeavor to maintain MJIL’s professional standards. The recently launched Resource Wiki is also one of MJIL’s initiatives to address the consequences of the shortened degrees of the Juris Doctor program at the Melbourne Law School, and hence the shorter terms of membership at MJIL. The Wiki, with the aid of diagrams, pictures and a user-friendly online structure, explains in full detail all the steps required in retrieving commonly encountered international legal sources. Sources currently covered include periodicals (both online and hard-copy), international treaties, international judicial proceedings and primary materials of international institutions such as the United Nations and World Trade Organization.

Over time, the Wiki aims to grow and accumulate more and more research experience in order to become not only a comprehensive research guide, but also an educational resource. In particular, with the restructuring of the Melbourne Manual for International Legal Citation ('MMILC') as part of the redevelopment and release of the new AGLC 3, the Resource Wiki will continue to provide easy to use research tips previously contained in the MMILC, as well as additional resources for academics, practitioners and students of international law above and beyond citation rules. We are excited by this new development, which we hope will continue to promote international legal research and scholarship and also MJIL’s role, not only as a scholarly journal, but also as a practical and helpful resource for international legal research.

Errol Lloyd
MJIL Citation Coordinator 2008

http://mjil.law.unimelb.edu.au  law-mjil@unimelb.edu.au
On Tuesday 19 August 2008, the Melbourne Law School welcomed renowned expert on international law Professor Yoram Dinstein from Tel Aviv University to conduct the inaugural annual Nathan and Pamela Jacobson Lecture before a capacity audience. Professor Dinstein is particularly well known for his contributions to international legal scholarship with *War, Aggression and Self-Defence*, now in its fourth edition (2005), and *The Conduct of Hostilities under the Law of International Armed Conflict* (2004). At the lecture, Professor Dinstein addressed the topic of the ‘Many Faces of the International War on Terrorism’. In doing so, Professor Dinstein considered the difficulties associated with arriving at an agreed definition of ‘terrorism’ and in reflecting on its ‘many faces’ also addressed pertinent questions of state responsibility, self-defence, extra-territorial law enforcement and, ultimately, the implications for international humanitarian law, particularly in regard to the protections (and potentially the erosion of protections) afforded to civilians.

Rebecca Hughes
MJIL. Editor 2008

The Charter of Human Rights Mooting Competition involves teams from all five Victorian law schools, mooting on issues raised by the recently-passed *Victorian Charter of Human Rights and Responsibilities Act 2007*. This year, two MJIL-laden teams from The University of Melbourne participated: Melbourne 1 (Rebecca Hughes, Dimitri Ternovski and Devon Whittle) and Melbourne 2 (Laura Bellamy, Chris Hibbard, and Mick Power). These two teams made it all the way to the grand final, which was judged by a panel consisting of Maxwell P of the Court of Appeal, Howard J of the Magistrate’s Court and Helen Szoke of the Equal Opportunity and Human Rights Commission. In a moot characterised by a high standard of research and argument from both sides, Melbourne 2 emerged the narrow victor.

The moot problems raised issues including freedom of religion, cultural expression and assembly, as well as the fraught issue of appropriate timeframes for the detention of children in police custody.

Because of the relatively new status of the Charter, and the fact that it is almost unique in Australia, there is not a broad familiarity with the Charter in law schools or in the legal profession. Hence, the Human Rights Moot is a welcome addition to the moot calendar and is important in getting students talking about and analysing the issues raised by the Charter so that it can be properly applied in the future. Moreover, we personally found the experience very rewarding, and would encourage others to participate in the competition next year.

Laura Bellamy
MJIL. Book Review Editor 2008

Chris Hibbard
MJIL. Commentaries Editor 2008

Grand Final teams: Melbourne 1 and Melbourne 2
L–R: Devon Whittle, Laura Bellamy, Rebecca Hughes, Dimitri Ternovski, Mick Power and Chris Hibbard.
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New Publications in International Law
INTERNATIONAL LAW @ MELBOURNE

As a leading centre for international law teaching and scholarship, the Melbourne Law School continues to attract world-renowned academics and practitioners of international law. Each year, the Law School hosts a variety of events and workshops to facilitate and promote these distinguished guests.

In recent months …

- On 30 June 2008, Professor Michael Joachim Bonell (University of Rome I), the Hon Justice Paul Finn (Federal Court of Australia) and Associate Professor Fred Ellinghaus (Melbourne Law School) addressed the Private Law Seminar on ‘The UNIDROIT Principles of International Commercial Contracts’.

- On 1 July 2008, Associate Professor Balakrishnan Rajagopalan (University of Rome I), the Hon Justice Paul Finn (Federal Court of Australia) and Associate Professor Fred Ellinghaus (Melbourne Law School) addressed the Private Law Seminar on ‘The UNIDROIT Principles of International Commercial Contracts’.


- On 3 October 2008, the Centre for Comparative Constitutional Studies hosted a national conference on an Australian Bills of Rights, the 2008 Protecting Human Rights Conference.

- On 8 October 2008, Sir Ninian Stephen was joined by Professor Tim McCormack and Mr Alpha Lisimba in discussing the tensions international criminal law creates between justice and peace and the stabilisation of post-conflict societies, at the inaugural MJIL Public Forum.

- On 9 October 2008, three young lawyers spoke of their experiences working with international criminal tribunals and courts at a public lecture entitled ‘International Humanitarian Law and the Young Lawyer’. Ms Claire Henderson, former legal intern of the ICTR, was joined by Ms Phoebe Knowles, former defence legal advisor for the UN Special Tribunal for Sierra Leone and Ms Krystyna Grinberg, former defence legal advisor at the ICTY and former legal intern of the International Criminal Court.

- On 14 October 2008, Ms Fatou Bensouda, ICC Deputy Prosecutor, presented a lecture exploring recent developments in the International Criminal Court.

- On 23 October 2008, Mr Yousef Stanley Adi Prasetyo, Commissioner at the Indonesian National Human Rights Commission, presented a lecture entitled ‘10 Years of Reform in Indonesia: Reflections from a Human Rights Commissioner’ as a part of the The Asian Law Centre and Indonesia Forum. The lecture questioned the extent to which Indonesia has achieved substantial democracy over the past decade, and the forces which may be said to have stagnated the establishment of a stable human rights framework.

And coming up …

- As a part of the Tokyo War Crimes Trial Conference (to be held from Monday 10–Wednesday 12 November 2008), Professor Hisakazu Fujita will deliver a public lecture entitled ‘The Tokyo War Crimes Trial: Humanity’s Justice or Victors’ Justice?’ on 10 November 2008. The conference seeks to enhance the prospects of global justice, explore a neglected aspect of Australasian history and offer a wide-ranging discussion about the future of international law and the law of war crimes.

- On Tuesday 18 November 2008 at 6pm, Mamdouh Habib and Julia Collingwood, authors of ‘My Story – The Tale of a Terrorist Who Wasn’t’ will be in conversation with Professor Tim McCormack. The event will be held at the Melbourne Law School.

- Professor Hilary Charlesworth, Australian Research Council Federation Fellow, Professor in RegNet and Director of the Centre for International Governance and Justice at The Australian National University, will present a lecture entitled ‘Talking to Ourselves: Should International Lawyers Take a Break from Feminism?’ on 19 November 2008.

MJIL NEWS

MJIL would like to warmly congratulate Advisory Board members Professors Andrew Kenyon and Dianne Otto on their appointment to professorship at the Melbourne Law School.
MJIL would like to thank its sponsors for their generous support

Allens Arthur Robinson

Blake Dawson

Deacons

Mallesons Stephen Jaques

RioTinto
After completing the editorship in 2006, Ferg undertook the Jessup Moot over the 2006/07 summer before finishing his law subjects with an unwieldy Advanced Legal Research paper and a fascinating trip to Geneva for the inaugural Institutions in International Law subject, which marked the beginning of a nine month overseas jaunt.

After a short stint of backpacking in Europe, Ferg spent Semester 2, 2007, on exchange to Georgetown University in Washington, DC, studying international relations in completion of his arts degree. Immersed in all manner of cutting edge global issues — from energy security to Chinese foreign policy, from nuclear weapons to climate change — at the epicentre of world politics, Ferg found his true calling. Accordingly, he decided to defer articles to stay in the US, completing a three month internship at Washington mega-think-tank the Center for Strategic & International Studies, where he worked in the Asian Security Group on a mix of US–China relations, Northeast Asian strategic and nuclear issues, and Southeast Asian politics. Enamoured of Washington and sad to leave new friends and colleagues after an exhilarating eight months in the dynamic capital, impending bankruptcy, visa expiration and graduation compelled Ferg to return home in April.

In Melbourne, Ferg worked with fellow MJIL-er (and Ad Hoc co-founder) Jono Gomez at energy and resources consultancy Negotiation and as a research assistant in the Law School. Ferg is currently in Sydney completing a(nother) three-month internship at a foreign policy think-tank, this time at the Lowy Institute for International Policy, where he is working on a project reviewing the resourcing of Australia’s ‘Instruments of Foreign Policy’ in the context of 21st century challenges to Australia’s international interests. He is also planning a trip to India in December.

Ferg retains many close friends and fond memories from his three years on MJIL and has benefitted enormously from the academic and managerial skills he honed in the process. He is particularly proud that Ad Hoc is still going strong!

Now that three years have passed since she edited MJIL (in 2005, with Chris Thomas and Laura Deschamps), Megan can look back on the experience with the rose-coloured glasses common to nostalgic former Eds. She weaned herself slowly off the Law School, spending 2006 doing history honours and working part time for the Institute of International Law and the Humanities. After a brief sojourn in the corporate world in the form of articles at Allens, she commenced an associateship with the Hon Justice K M Hayne AC, based in Canberra. She loves all aspects of work at the Court apart from the ‘based in Canberra’ part, though she has been happy to renew contact with other former MJIL-ers in exile in the nation’s capital.

Since her time on MJIL as a General Member, Assistant Editor and inaugural Citation Coordinator from 2001-04, Sarah’s life has been far from dull. In her last year in the LLB, Sarah completed a 3-month internship in Washington DC with Major Dan Mori of the US Department of Defense, who was then representing David Hicks before a military commission in Guantanamo Bay. Upon graduating in 2006, Sarah completed the LIV College of Law Course while working as a research assistant at the Asia Pacific Centre for Military Law.

Unable to leave the law school, Sarah began a PhD on criminal responsibility in complex international crimes in late 2006, and continued her association with MJIL, publishing a case note on the Hamdan v Rumsfeld case in volume 7(1). This year, Sarah took some time out of her postgraduate studies to take on the role of Associate to the Hon Justice Lex Lasry of the Supreme Court of Victoria. She describes working with Lasry J as one of the most interesting and rewarding experiences she has had to date, and would encourage all members of MJIL to consider applying for a position as an Associate at the Supreme or County Court.
ANNOUNCEMENTS

2009 Editors Announced

MJIL are proud to announce the election of Laura Bellamy, Sarah Dehm and Jeremy Leung as 2009 Editors of MJIL.

Laura Bellamy and Sara Dehm at the 2008 MJIL Cocktail Party (Jeremy Leung was overseas during Semester 2).

Do You Have Any Alumni News?

If you are a member of MJIL’s alumni and your contact details have changed, or are about to change, please drop us a line so that we can update our records:

<law-mjil@unimelb.edu.au>

If you would like to be featured in Alumni Pages in the next edition of Ad Hoc, we would be delighted to hear from you.

Volume 10(1) Call for Submissions

The closing date for submissions to volume 10(1) of the Journal is fast approaching. For inclusion in the first edition of the Journal for next year, submissions are required by 31 January 2008. These can be submitted in soft copy to <law-mjil@unimelb.edu.au>.

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